IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.10706 OF 2004

Sadashiv Ramchandra Bagane. ...Petitioner.

Versus

Bagirathi Shankar Chougule & Anr. ...Respondents.

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Mr. U. P. Warunjikar for the Petitioner.
Mr. G.K. Gole for Respondent No.1 and 2.

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CORAM : DR. D.Y. CHANDRACHUD, J.

May 5, 2005.

P.C.:

Rule, by consent returnable forthwith. Counsel appearing for the Respondents waives service. By consent of Counsel and at their request taken up for hearing and final disposal.

2. A suit for partition and separate possession was decreed on 19th September 2002. The Petitioner who is the original Defendant filed an application for condonation of delay on 6th October 2003. He

stated in his application that he was suffering from high blood pressure from 11th January 2003 to 18th October 2003. The First Appellate Court declined to condone the delay holding that the delay prior to 11th January 2003 had not been explained in terms of a Medical Certificate.

3. Having heard Counsel appearing on behalf of the Petitioner and the Respondents, I am of the view that a liberal view should have been taken by the First Appellate Court. In a matter such as the present, where a decree is for partition and for separate possession, the Court has to be mindful of the consequences which would ensue if the parties were to be completely shut out from having an opportunity to contest a regular First Appeal on merits. There was undoubtedly delay on the part of the Petitioner. Counsel, however, submitted on behalf of the Petitioner that this is not a case where the Petitioner is guilty of negligence, inaction or conduct of such nature as to warrant an inference that he abandoned his claim. The Petitioner, it was urged, bonafide stepped into the witness box and proved the medical certificate. Apart from these circumstances, I am of the view that the

Learned Additional District Judge was in error in forming the view that there was no substance in the merits of the appeal while deciding as to whether the delay should be condoned. The question as to whether there is any substance in the appeal will have to be decided in the appeal if delay is condoned. In my view, the prejudice, if any, that would be caused to the original Plaintiff can be condoned by an order of costs.

4. In these circumstances, the impugned order of the Additional District Judge, Kolhapur dated 27th October 2004 is quashed and set aside. The application for condonation of delay filed by the Petitioner (Miscellaneous Application No.238 of 2003) shall stand allowed subject to the payment of costs quantified at Rs.1500/-. The payment of costs shall be a condition precedent and shall be effected within a period of eight weeks from today. In the event that the costs are paid and the delay is condoned as a consequence, the Learned Additional District Judge is requested to dispose of the appeal by the end of 2005.

5. The Petition is accordingly disposed of in the aforesaid terms.

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